proper inquiries failed to discover the adverse claim. Under this theory, the unexplained presence of a stranger upon the land is given its proper significance, and yet any unnecessary hardship which might fall upon the purchaser in cases where the tenant refuses to disclose his landlord's identity is avoided.[16]

A difficult application of these principles was involved in the recent case of *Penrose* v. *Cooper* (Kan. 1912) 121 Pac. 1103, where a tenant of the grantor remained in possession as tenant of the grantee of an unrecorded deed, and the defendant occupied the position of a purchaser without actual knowledge of the deed. The court repudiated the narrow English view, and held that the possession of the tenant was presumptive notice of his new landlord's title. It apparently ignored, however, the fact that the tenancy had commenced prior to the making of the unrecorded conveyance, and that the defendant had knowledge of the original lease. In this situation, the weight of authority favors the rule that the possession of the tenant is not notice of his new landlord's interest in the land, there being no visible change of possession sufficient to put a purchaser upon inquiry.[17] Possession itself is often said to be of sufficient notoriety to give notice of any new rights which may subsequently have arisen in favor of the actual occupant;[18] but where the original claim of the latter has been brought to the knowledge of the purchaser, the better view is to the effect that the presumption of notice arising from possession is rebutted.[19] So a purchaser who knows of a lease from his grantor to the tenant in possession should be entitled to rely upon his information without further inquiry, and to refer the tenant's possession to the previous lease, in the absence of any change of occupancy to arouse his suspicions. The result reached in the principal case, therefore, appears to be too harsh an application of the doctrine of constructive notice.

THE INTEREST OF THE BENEFICIARY OF A LIFE INSURANCE POLICY.—Although the law of insurance rests primarily on a contract basis,[1] it has frequently shown a tendency to deviate from orthodox contract principles. In its early history, it followed the usual rule in refusing to accord any rights under an insurance policy to one who had paid no consideration.[2] When, however, the anomalous right of the bene-

[16]Trumpower *v.* Marcey (1892) 92 Mich. 529; Wade, *op. cit.* § 286; see Williamson *v.* Brown *supra;* Fair *v.* Stevenot *supra;* 2 Pom. *op. cit.* § 624. But if the presumption is regarded as conclusive, great hardship must result, since an estoppel is personal and cannot be invoked against a landlord on account of the false representations of his tenant.

[17]King *v.* Paulk (1887) 85 Ala. 186; Loughridge *v.* Bowland (1876) 52 Miss. 546; Wahrenberger *v.* Waid (1896) 8 Colo. App. 200; Stockton *v.* Bank (1903) 45 Fla. 590. But see *contra,* holding with the principal case that a change of possession is not necessary. Duncan *v.* Matula (Tex. Civ. App. 1894) 26 S. W. 638; Hannan *v.* Seidentopf (1901) 113 Ia. 658; see Duff *v.* McDonough (1893) 155 Pa. 10.

[18]Daniels *v.* Davison (1809) 16 Ves. 248; Coari *v.* Olsen (1878) 91 Ill. 273; Matthews *v.* Demerritt (1843) 22 Me. 312.

[19]Leach *v.* Ansbacher (1867) 55 Pa. 85; Rogers *v.* Jones (1836) 8 N. H. 264.

[1]Vance, Insurance, § 309.

[2]Bailey *v.* New England Life Ins. Co. (1873) 114 Mass. 177.

ficiary to sue upon a contract made for his benefit sprang up in general contract law, it was instantly and universally recognized in the field of insurance.[3] Indeed this anomaly has here received an extension which produces a peculiar result. For, while it is generally admitted that the right of the beneficiary is destroyed by the mutual agreement and rescission of the principals to the contract, the overwhelming weight of authority regards the right of the beneficiary of a life insurance policy as vested and indefeasible.[4] While it is difficult to characterize this unique interest, it seems to have almost attained to the dignity of a full fledged property right. Thus, it cannot be destroyed by any attempted change of beneficiary, whether made directly or by surrender of the original instrument in return for one in which a different payee is named;[5] it may be assigned without the consent of the insured;[6] and it is both descendible and devisable.[7] The subject is complicated however by inconsistencies which have sprung up in the process of delimiting and defining the nature of this interest. Thus, in the recent case of *Martin* v. *Modern Woodmen of America* (Ill. 1912) 97 N. E. 693, it was held that the beneficiary of a mutual benefit policy took no vested interest but a mere possibility which was destroyed by his death before that of the insured. This exception of mutual benefit insurance from the operation of the general rule, while sustained by the majority view,[8] rests on no logical basis of distinction. It may be explained however by the almost universal existence in the mutual policy, or company by-laws, of an express reservation of the right to change the beneficiary.[9] Again, a conflict of authority has arisen in cases where the beneficiary predeceases the insured. In some jurisdictions the former's interest is regarded as vested, and descends to his personal representatives;[10] in others it reverts to the insured like a lapsed trust;[11] in still others it is not divested unless the policy holder names a new beneficiary.[12] And finally, a few courts have employed the argument that since a policy operates as a gift on the death of the insured who procured it, the rules of testamentary construction must apply, and therefore, when a class

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[3]Wald, Pollock's Contracts (Williston's 3rd Am. ed.) 251.

[4]This results in a few States, however, from express enactment. Mo. Rev. Stat. 1909, § 6944; Mass. Rev. Laws 1902, Chap. 118, § 73.

[5]Irwin *v.* The Travelers Ins. Co. (1897) 16 Tex. Civ. App. 683; Blum *v.* N. Y. Life Ins. Co. (1906) 197 Mo. 513; Ricker *v.* The Charter Oak Life Ins. Co. (1880) 27 Minn. 193; Whitehead *v.* N. Y. Life Ins. Co. (1886) 102, 143; *contra,* Estate of Breitung (1890) 78 Wis. 33.

[6]Doty *v.* Dickey (Ky. 1906) 96 S. W. 544. Such assignment may however be prohibited by statute. See Whitehead *v.* N. Y. Life Ins. Co. *supra.*

[7]Glanz *v.* Gloeckler (1882) 104 Ill. 573; Laughlin *v.* Norcross (1902) 97 Me. 33; Continental Life Ins. Co. *v.* Palmer (1875) 42 Conn. 60; Drake *v.* Stone (1877) 58 Ala. 133.

[8]7 COLUMBIA LAW REVIEW 214; Peterson *v.* Gibson (1901) 191 Ill. 365.

[9]See Sabin *v.* Phinney (1892) 134 N. Y. 423; Schmidt *v.* Northern Life Ass'n. (1900) 112 Ia. 41.

[10]See cases cited in foot-note, 7 *supra.*

[11]Ryan *v.* Rothweiler (1893) 50 Oh. St. 595; see *In re* Policy (1902) L. R. 1 Ch. D. 282.

[12]Smith *v.* Metropolitan Life Ins. Co. (1908) 222 Pa. 226; see Shields *v.* Sharp (1889) 35 Mo. App. 178.

is designated as beneficiaries, those members surviving the insured take the entire proceeds and representatives of the predeceased member are ignored.[13]

The reluctance of the courts to treat this interest as consistently vested is undoubtedly due to their failure to discover any satisfactory justification for their attitude in treating it as an indefeasible right. Thus, while the policy is commonly spoken of as creating an irrevocable trust or voluntary settlement for the beneficiary,[14] no proof is offered that any sum has been specifically set aside by the company.[15] And on the other hand, to treat the policy holder as trustee, for the beneficiary, of a right against the company disregards the intent of the latter, which is to be liable directly and solely to the beneficiary rather than to the insured. It is impossible too, to consider the transaction as the gift of a chose in action,[16] since the beneficiary's right arises immediately on the issuance of the policy without the necessity of a delivery.[17] Again, it has even been held that the one procuring the insurance acted as agent for the beneficiary,[18] and frequently the policy is spoken of as a contract directly with the latter.[19] But, except in rare cases,[20] this view manifestly distorts the facts. The real basis for the rule appears to be found in the favor everywhere shown to any arrangement that will provide future protection for the family,[21] and in the feeling that only by treating this interest as a vested right can all future control by the insured or his creditors be prevented. These considerations fully justify a result which it is impossible to sustain on any logical basis and will no doubt furnish the guiding principle in the further crystallization of the law on this complicated subject.

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[13]Farr *v.* Grand Lodge (1892) 83 Wis. 446; Bell *v.* Kineer (1897) 101 Ky. 271. When there are two classes of beneficiaries and the interest of one class is contingent on its surviving the other, as "to my wife if living, and if not living, to the children," some courts decree payment to those children only who survive their mother, Walsh *v.* Mut. Life. Ins. Co. (1892) 133 N. Y. 408, while others allow recovery by the estate of the predeceased child. *In re* Estate of Conrad (1893) 89 Ia. 396.

[14]Preston *v.* Conn. Mut. Ins. Co. (1902) 95 Md. 101; Ricker *v.* Charter Oak Life Ins. Co. *supra.*

[15]In New York, however, a bank must hold as trustee, regardless of the actual intention of the parties, any money deposited for a specific purpose, People *v.* City Bank (1884) 96 N. Y. 32; Cutler *v.* Am. Exch. Bank (1889) 113 N. Y. 593, and there would seem to be no greater difficulty in applying the same rule, in this State, to an insurance company.

[16]Olmsted *v.* Keyes (1881) 85 N. Y. 593, 598; Richards, Insurance (3rd ed.) 64.

[17]When, however, the policy has been delivered to the beneficiary, his right is clearly irrevocable. Lemon *v.* Phœnix Mut. Life Ins. Co. (1871) 38 Conn. 294.

[18]Whitehead *v.* N. Y. Life Ins. Co. *supra.*

[19]See Walsh *v.* Mut. Life Ins. Co. *supra,* 418; Lanier *v.* Ins. Co. (1906) 142 N. C. 14, 18.

[20]See Millard *v.* Brayton (1901) 177 Mass. 533.

[21]Johnson *v.* Bacon (1907) 92 Miss. 156; see Continental Life Ins. Co. *v.* Webb (1875) 54 Ala. 688.